

MEMORANDUM OF AGREEMENT

between the

COMMONWEALTH OF KENTUCKY

**ENVIRONMENTAL AND PUBLIC
PROTECTION CABINET**

**DEPARTMENT FOR ENVIRONMENTAL
PROTECTION**

and

**THE LOUISVILLE AND JEFFERSON
COUNTY METROPOLITAN SEWER
DISTRICT**

and

**THE LOUISVILLE METRO HEALTH
DEPARTMENT**

SUBJECT: Supplemental Environmental Project

Jefferson County

This Memorandum of Agreement (hereinafter “Agreement”), entered into by and between the Environmental and Public Protection Cabinet, acting by and through the Department for Environmental Protection (hereinafter the “Cabinet”), with an address of 14 Reilly Road, Frankfort, Kentucky 40601; the Louisville and Jefferson County Metropolitan Sewer District (hereinafter “MSD”), with an address of 700 West Liberty Street, Louisville, KY 40203; and the Louisville Metro Health Department (hereinafter “LMHD”), with an address of 400 East Gray Street, Louisville, KY 40202;

WITNESSETH:

WHEREAS, the Cabinet is an agency of the Commonwealth of Kentucky authorized by statute to enforce environmental protection statutes and regulations; and

WHEREAS, the purpose of this AGREEMENT is to set forth in writing the understanding of the parties in facilitating a program to perform public health screenings for residents of neighborhoods adjacent to the industrialized areas of the western portion of the Louisville and Jefferson County Metropolitan area; and

WHEREAS, these health screenings are to be coordinated through LMHD at no cost to the residents of the service area and, except for some staff expenses, at no cost to the LMHD; and

WHEREAS, a consent decree entered on August 12, 2005 in the United States District Court for the Western District of Kentucky, Civil Action No. 3:05 CV 236-S provides, at page 29 and in Exhibit A, that MSD shall timely perform supplemental environmental projects by certain dates specified in Exhibit A, and health screenings for western Louisville are among the specified supplemental environmental projects; and

WHEREAS, the parties estimate that in the year 2007 approximately 30,000 residents of the area will be eligible for health screenings; and

WHEREAS, the screenings will be aimed toward health concerns and diseases most commonly associated with living in close proximity to industrialized areas, including but not limited to certain forms of cancer; and

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and in consideration of a total sum of One Million Two Hundred Thousand Dollars (\$1,200,000.00) that MSD is legally obligated to contribute in satisfaction of its obligations under the Consent Decree, the Cabinet, MSD, and LMHD hereby AGREE as follows:

I. OBLIGATIONS OF THE CABINET

The Cabinet shall:

- 1.1 Cooperate fully with, and provide advice and assistance to MSD and LMHD as needed and as requested in order to facilitate completion of the health screening program for western Louisville (hereinafter referred to as the “Project”) that is the purpose of this AGREEMENT.
- 1.2 Monitor MSD’s performance under this AGREEMENT to ensure transfer of funds described in Section 2.1 of this AGREEMENT in satisfaction of the Consent Decree.
- 1.3 Monitor LMHD’s performance under this AGREEMENT to ensure compliance herewith and completion under the terms herein. Monitoring responsibilities shall include but not be limited to:
 - Reviewing all reports and plans submitted by LMHD;

- Holding periodic review meetings with LMHD, as needed;
- Providing technical and programmatic assistance to LMHD during the term of this AGREEMENT, as needed; and
- Upon final payment by MSD, provide certification to the parties and the United States District Court that MSD has fully performed its supplemental environmental project obligation to provide funding for health screenings for western Louisville as set forth in the consent decree entered on August 12, 2005 in the United States District Court for the Western District of Kentucky, Civil Action No. 3:05 CV 236-S.

- 1.4 Review and provide comments on the progress of phases of the Project to the health screening program Steering Committee to ensure it complies with the scope of work outlined and any deliverables.
- 1.5 Provide all documentation necessary to assist MSD and LMHD to achieve a successful and timely completion of the Project described in this AGREEMENT, including requests from any party to this AGREEMENT and the Consent Decree, and from the United States District Court.

II. OBLIGATIONS OF MSD

MSD shall timely remit payment to LMHD of \$1,200,000 no later than February 15, 2007.

III. OBLIGATIONS OF LMHD

- 3.1 Develop a line-item budget for the Project and submit it to the Cabinet upon finalization of the AGREEMENT.

- 3.2 Provide the Cabinet with a quarterly summary of funds that are proposed to be used during that quarter and reporting of funds used during the previous quarter.
- 3.3 Perform the duties encompassed in the Project that further the intent of this AGREEMENT, including but not limited to:
- Communication and outreach.
 - Health education.
 - Health screening focused on diseases with high incidence and mortality.
 - Follow-up and referral for care for individuals that participate in the screening.
- 3.4 Indemnify and hold harmless the Cabinet, and all of its employees, agents and representatives, from any action or claim arising or resulting from performance of the work and services contracted to fulfill its obligations under this AGREEMENT to the extent permitted by Kentucky law.
- 3.5 Prepare and submit to the Cabinet, within 60 days after conclusion of the period of this AGREEMENT, a final report of all work accomplished under the AGREEMENT, including monies received and expenditures made to further the completion of the Project.

**IV. ACCESS TO CONTRACTORS' BOOKS,
DOCUMENTS, PAPERS, RECORDS, OR OTHER
EVIDENCE DIRECTLY PERTINENT TO THE
CONTRACT**

- 4.1 LMHD agrees that they are a contractor for the purposes of this agreement as defined in KRS 45A.030(7). The contractor agrees that the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall

have access to any books, documents, papers, records, or other evidence which is directly pertinent to this AGREEMENT for the purpose of financial audit or program review. Furthermore, any books, documents, papers, records, or other evidence provided to the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, or the Legislative Research Commission, which is directly pertinent to the AGREEMENT, shall be subject to public disclosure regardless of the proprietary nature of the information, unless specific information is identified and exempted and agreed to by the Secretary of the Finance and Administration Cabinet as meeting the provisions of KRS 61.878(1)(c) prior to the execution of the AGREEMENT. The Secretary of the Finance and Administration Cabinet shall not restrict the public release of any information that would otherwise be subject to public release if a state government agency were providing the services.

V. MUTUALITY OF OBLIGATIONS

- 5.1 The obligations imposed upon the parties to this AGREEMENT are for the benefit of the parties and the timely fulfillment of each and every obligation in accordance with this AGREEMENT is necessary. The failure of any party to fulfill any of its obligations under this AGREEMENT shall constitute a breach of this AGREEMENT, and shall entitle the other parties to commence appropriate legal or equitable action to enforce its rights under this AGREEMENT, unless the fulfillment of such obligation is waived or modified by the affected party. All waivers shall be in writing, signed by the affected party, and a waiver of one breach shall not constitute a waiver of any other breach.

- 5.2 In the event of a material breach by any party to this AGREEMENT, the other party may terminate this AGREEMENT, as provided in paragraph IX herein, without further obligation to the other parties. The rights of the parties to this AGREEMENT to pursue remedies for breach of any of the provisions hereof shall survive the termination, expiration or cancellation of this AGREEMENT.

VI. METHOD OF PAYMENT

- 6.1 LMHD shall certify to the Cabinet, with supporting documentation of all expenses incurred and payments made, all work has been satisfactorily performed to justify payment for payment.
- 6.2 The Cabinet shall not be obligated to reimburse either MSD or LMHD, or any of their respective employees or representatives, for expenses they have incurred in connection with carrying out their duties under this AGREEMENT or completing the Project.

VII. TERM OF AGREEMENT

- 7.1 This AGREEMENT shall be effective beginning February 15, 2007 and ending June 30, 2008 or upon the parties' completion of their obligations under this AGREEMENT, if earlier than June 30, 2008.
- 7.2 The parties may agree to extend the ending date of this AGREEMENT, if they so agree in writing.

VIII. ASSURANCES

- 8.1 The parties to this AGREEMENT shall comply with the Executive Branch Code of Ethics (KRS Chapter 11A), where required, and all applicable state and federal statutes relating to nondiscrimination.

- 8.2 The parties represent and warrant, by the signatures of their duly appointed representatives, that they are legally entitled to enter into this AGREEMENT and will not be violating, directly or indirectly, any conflict of interest statute of the Commonwealth of Kentucky by performance of the obligations imposed on them by this AGREEMENT. The parties further represent and warrant that they have no conflict of interest, in any manner or degree, with the performance of the duties imposed by this AGREEMENT. The parties further represent and warrant that no persons having any conflict of interest shall be employed to assist in performing the parties' obligations under this AGREEMENT.
- 8.3 The parties shall abide by all terms contained in KRS 45.570.

IX. CHOICE OF LAW AND FORUM

- 9.1 All questions as to the execution, validity, interpretation, construction, and performance of this AGREEMENT or any of its terms shall be governed by the laws of the Commonwealth of Kentucky.
- 9.2 Any suit, action or other proceeding regarding the execution, validity, interpretation, construction, or performance of this AGREEMENT shall be filed in the Franklin Circuit Court of the Commonwealth of Kentucky.

X. CANCELLATION

- 10.1 Either party has the right to terminate or cancel this AGREEMENT without cause upon thirty days prior written notice to the other party, or for cause at any time without prior written notice.

XI. MISCELLANEOUS PROVISIONS

- 11.1 The headings set forth in this AGREEMENT are for convenience of reference only, and the words contained therein shall in no way be intended to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this AGREEMENT.
- 11.2 The terms and conditions of this AGREEMENT shall be binding upon and shall inure to the benefit of the parties hereto and their successors and assigns. This provision shall not be construed to permit assignment by any party of any of its rights or duties under this AGREEMENT, which assignment shall be prohibited except with the prior written consent of all parties hereto. Such consent shall not be unreasonably withheld.
- 11.3 This AGREEMENT sets forth the entire understanding of the parties with respect to the subject matter hereof, supersedes all existing agreements among them concerning the subject matter hereof, and may be modified only by a written instrument duly executed by each of the parties hereto.
- 11.4 Time is of the essence in the performance of each of the terms and conditions of this AGREEMENT.
- 11.5 All notices, requests, demands, waivers, and other communications given as provided in this AGREEMENT shall be in writing, sent by First Class Mail, deemed effective upon mailing, and addressed as follows:

If to the Cabinet:

Larry Taylor, Env. Scientist
DEP
14 Reilly Road
Frankfort, KY 40601

If to MSD:

Herbert Schardein, Exec. Director
LJCMSD
700 West Liberty Street
Louisville, KY 40203

If to LMHD:

Adewale Troutman, Director
LMHD
400 East Gray Street
Louisville, KY 40202

- 11.6 Any party to this AGREEMENT may change the address at which it is to receive notices, requests, demands, waivers, and other communications, on the condition that party first provides written notice of that change of address to the other party.
- 11.7 Nothing in this AGREEMENT shall be interpreted as guaranteeing the rights of any person or governmental agency other than the parties to this AGREEMENT.
- 11.8 If a provision of this AGREEMENT or the application thereof to any person or circumstance shall be declared to be invalid or unenforceable to any extent, the remainder of this AGREEMENT and the application of such provision to other persons or circumstances shall not be affected thereby and shall be enforced to the fullest extent permitted by law.
- 11.9 This AGREEMENT may be executed simultaneously in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument. It shall not be necessary that any single counterpart hereof be executed by all parties hereto so long as at least one counterpart is executed by each party.

11.10 Except to the extent otherwise expressly specified in this AGREEMENT, all remedies specified herein are in addition to, and not in lieu of, other remedies available to the parties both at law and in equity.

11.11 The Finance and Administration Cabinet may audit, review or inspect all documentation and records pertaining to this AGREEMENT pursuant to KRS 45A.150.

IN WITNESS WHEREOF, the Cabinet, MSD and LMHD have executed this AGREEMENT as of the dates written below.

The signatures below signify acceptance and approval of this Agreement.

AGREED TO BY:

Teresa J. Hill, Secretary
Environmental and Public Protection Cabinet

Date

Herbert Schardein, Executive Director
LJCMSD

Date

Adewale Troutman, Director
LMHD

Date

APPROVAL RECOMMENDED BY:

Cheryl A. Taylor, Commissioner
Department for Environmental Protection

Date

APPROVED AS TO FORM AND LEGALITY:

Shannan B. Stamper, Executive Director
Office of Legal Services
Environmental and Public Protection Cabinet

Date

Attorney
LJCMSD

Date

Attorney
Assistant Jefferson County Attorney,
Louisville Metro Government

Date